

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:22-cv-00038-MR-WCM**

**AMANDA EDWARDS, Individually as)
Beneficiary and as Executor of the)
Estate of Vivian Profitt McDonald,)**

Plaintiff,)

vs.)

ORDER

**NEW DAY FINANCIAL, LLC, a)
Maryland Limited Liability Company;)
COMMONWEALTH REAL ESTATE)
INFORMATION SERVICES, a)
Pennsylvania Limited Liability)
Company, solely as Trustee also)
known as Commonwealth Real)
Estate Information Services, LLC;)
MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS, INC.)
("MERS"), solely as a nominee for)
New Day Financial, Lender;)
SECRETARY OF HOUSING AND)
URBAN DEVELOPMENT; TIMOTHY)
V. ANDERSON, Esq.; ANDERSON)
LAW, solely as Foreclosure)
Commissioner; and MICHAEL A.)
KUTYANA,)**

Defendants.)

THIS MATTER is before the Court on the Motion to Dismiss or, in the Alternative, for Summary Judgment, Together with Request for Lifting of

Injunctive Relief and Immediate Possession by Defendant Michael A. Kut yana [Doc. 3]; the United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction, or in the Alternative, Motion for Summary Judgment [Doc. 10]; the Motion to Dismiss by Defendant Mortgage Electronic Registration Systems, Inc. [Doc. 14]; and the Magistrate Judge's Memorandum and Recommendation [Doc. 36] regarding the disposition of those motions.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider the above-referenced motions and to submit a recommendation for their disposition.

On September 29, 2022, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support of a recommendation regarding the pending motions. [Doc. 36]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The period within which to file objections has now expired, and no written objections to the Memorandum and Recommendation have been filed. [See Docs. 37, 38: Notices of No Objection].

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation regarding the disposition of the pending motions.

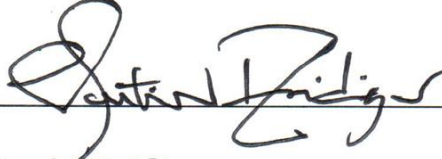
IT IS, THEREFORE, ORDERED that:

- (1) The Memorandum and Recommendation [Doc. 36] is **ACCEPTED**;
- (2) The United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction, or in the alternative, Motion for Summary Judgment [Doc. 10] is **GRANTED IN PART**, and the Plaintiff's claims against the Defendant Secretary of Housing and Urban Development ("HUD") are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction;
- (3) With the dismissal of the Plaintiff's claims against HUD, this matter is hereby **REMANDED** to the General Court of Justice, Superior Court Division, of Buncombe County, North Carolina, for further proceedings; and
- (4) No further action shall be taken with respect to the Motion to Dismiss or, in the alternative, for Summary Judgment, Together with Request for Lifting of Injunctive Relief and Immediate

Possession by Defendant Michael A. Kutyna [Doc. 3] or the Motion to Dismiss by Defendant Mortgage Electronic Registration Systems, Inc. [Doc. 14], such that these Motions may be addressed by the state court as appropriate following remand.

IT IS SO ORDERED.

Signed: October 27, 2022



Martin Reidinger
Chief United States District Judge

